IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1414 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHATNU BAPURAO SHIRSAGAR

Versus

G S R T C

Appearance:

1. Special Civil Application No. 1414 of 1992

MR MUKESH H RATHOD for Petitioner No. 1

MR PRANAV G DESAI for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/12/2003

ORAL JUDGEMENT

The petitioner was serving with the S.T.Corporation as an Accounts Officer. Since the petitioner wanted to retire voluntarily, he gave notice to the department for such retirement on 1-5-1987, requesting the authority to retire him with effect from 31st July, 1987.

2) At the relevant time, the petitioner was permitted to retire by giving him the benefit of G.S.O. dated 10-8-1977. The Corporation has paid retiral dues to the petitioner as per the said G.S.O. However, subsequently, by another G.S.O.No.898/1989, which was issued on 22-12-1989, the Corporation decided to increase the rate of gratuity and as per the same, the ceiling limit of Rs.48,000/- prescribed in the Gratuity Fund Regulation, G.S.O.772 of 5-7-82 for class-I and class-II officers, is revised from Rs.48,000/- to Rs.1 lac with effect from 1-8-1987. In view of the aforesaid amendment in the ceiling limit regarding payment of gratuity amount, the petitioner applied to the Corporation by his letter dated 21-6-1990 requesting the Corporation that he may be given the benefit of enhanced rate of gratuity and he requested the department that his case may be reconsidered again in view of G.S.O. 898/89 dated 22-12-89 and instructions in the same. The petitioner was informed by letter dated 15-10-1990 that the request of the petitioner for premature retirement was accepted with effect from 31-7-1987 and all the benefits were granted to him as per G.S.O. dated 10-8-1977. The petitioner was informed that since he had already retired w.e.f. 31-7-1987, he cannot get the benefit of increased rate of gratuity, which has come into effect from 1-8-1987, as, such benefit can be given only from 1-8-1987. The petitioner was, accordingly, informed that the said benefit of increased ceiling limit for payment of gratuity amount from Rs.48,000/- to Rs.1 lac as per G.S.O. No.898/89 cannot be implemented in the petitioner's case.

3) Being aggrieved by the said decision, the petitioner has filed this petition with a prayer that S.T.Corporation be directed to grant the benefit of revised enhanced rate of gratuity as per G.S.O. No.898/89 dated 22-12-1989.

4) In support of this petition, it is argued by Mr.Upadhyay that the petitioner is entitled to get the benefit of revised gratuity amount, as, according to him, the effect of the same is given w.e.f. 1-8-1987. He submitted that as per the G.S.O. dated 10-8-1977 an employee who has voluntarily retired, before attaining the age of 58 years, can be paid notional benefit as provided under instructions issued by the department. The relevant portion of the G.S.O. is as under :

"(3) If an officer asks for voluntary retirement i.e. before he attains the age of 58 years he should be given the notional benefit as under :-

(iii) The notional contribution will be added on the basis of the amount of subscription made immediately before retirement without employee's subscribing to the fund on or after the date of his retirement.

(iv) Similar benefit of notional service should be given in the gratuity/pension as may be admissible on the date of his voluntary premature retirement after adding the notional service to the extent of 5 years, provided that the benefits accrued are not more than what they would have got had they been retired on attaining the age of superannuation.

(v) The qualifying service referred to in S.R.51 (A) would mean total service rendered by the employee concerned in the Corporation in any category and in any class of service."

5) Relying upon the said clause, it is submitted by Mr.Upadhyay that as per clause-IV, upto five years' period, notional extension can be given and gratuity/pension is required to be fixed accordingly at the time when one accepts voluntary retirement. Relying upon this Clause, it is submitted that when the petitioner has retired on 31-7-1987, his services can be treated to have been extended for a period of five years for giving him this notional benefit and it is stated that the services of the petitioner be counted upto 1-8-1987 for the purpose of getting benefit of aforesaid revised scale of gratuity.

6) In my view, the said contention of Mr.Upadhyay is absolutely misconceived. It is required to be noted that, the petitioner gave notice for voluntary retirement on 1-5-1987 and accordingly he was allowed to retire voluntarily on 31-7-1987. As far as increased limit of gratuity amount as per G.S.O. No.898/1989 is concerned, the said G.S.O. was published on 22-12-1989 and benefit of enhanced rate of gratuity is made available in favour of those employees, who were in service on 1-8-1987. The said G.S.O., therefore, is given retrospective effect w.e.f. 1-8-1987. Since the petitioner has already retired prior to the aforesaid date, in my view, he is not entitled to the benefit of the revised rate of gratuity. The case of the petitioner is covered by the earlier ceiling limit, which is prescribed in the earlier G.S.O. and the petitioner was already paid whatever amount, which was required to be paid to him towards

retiral dues and gratuity as per the earlier policy. In that view of the matter, the petitioner is not entitled to get any benefit so far as revised rate of gratuity prescribed in G.S.O.No.898/1989 is concerned. As far as Clause-IV of earlier G.S.O. dated 10-8-1977 is concerned, it is in connection with those employees, who have taken voluntary retirement at the relevant time and if there is a shortfall in their service, by giving notional extension of certain period, they are made eligible to get such retiral dues, gratuity or pension, as the case may be. Therefore, the said clause is in a different context altogether and as per the same, it cannot be said that the petitioner is entitled to the benefit of revised scale of gratuity, in view of subsequent G.S.O. dated 22-12-1989. If the contention of the petitioner is accepted, then if an employee has retired in 1984, as per Clause-IV of earlier G.S.O., he can also get the benefit of notional extension upto 1989 and he is also required to be given the benefit of enhanced rate of gratuity. So far as G.S.O. of 10-8-77 is concerned, the notional extension is given in service in favour of the employee, who has voluntarily retired, only with an object to see that he may not have to suffer in the matter of gratuity or pension, for shortfall of his service and in order to give benefit of retiral dues, such as pension or gratuity, notional benefit is given by the said G.S.O. Therefore, the said G.S.O. has nothing to do with the enhanced rate of gratuity or pension. So far as enhanced rate of gratuity is concerned, it is required to be governed by subsequent G.S.O. dated 22-12-1989 in which it is provided that only that employee who is in actual service on 1-8-1987 will be entitled to the aforesaid benefit.

7) In view of the aforesaid facts, and in view of the fact that the petitioner had admittedly retired prior to 1-8-1987, he cannot get the benefit of said G.S.O. which is at Annexure-C page 14. The S.T.Corporation is, therefore, absolutely justified in not extending the benefit of revised gratuity rate, as, admittedly, the petitioner was not in service on that date.

8) In view of the aforesaid position, in my view, the insistence of the petitioner about getting enhanced rate of gratuity in view of the aforesaid G.S.O. of 1989 is absolutely misconceived and it cannot be said that S.T. Corporation has committed any error of law in rejecting the same. Therefore, I do not find any substance in this petition and the same is rejected. Rule is discharged with no order as to costs.

(P.B.Majmudar,J.)
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